IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 53 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMM. OF INCOME TAX - Applicant(s)
Versus
SMT. PERSIS A. KHAMBHATTA - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MRS SWATI SOPARKAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Ms Mona Bhatt, learned counsel for the revenue. Ms Vaibhavi Parikh, learned counsel for the assessee.

2. The Income Tax Appellate Tribunal, Ahmedabad Bench "A" in the matter of I.T.A. No. 1605/Ahd/1990 relating to assessment year 1984-85, has referred the following question to this Court for its consideration.

> "Whether the APPELLATE Tribunal is right in law and on facts in holding that cash discount and commission aggregation to Rs.1,80,564/- is turnover incentive and required to be excluded for the purpose of calculation of disallowance under section 37(3A)?"

3. The facts necessary for disposal of the present Reference are that the assessee, which is in the business of purchase and sell of Rasana Soft drinks manufactured by M/s Pioma Industries, made certain cash discount and gave commission aggregating to Rs.1,80,564/- and submitted that present is not a case, where provisions of section 37(3A) could be applied. The Assessing Officer did not agree with the submissions but the Commissioner, Income Tax (Appeals) observed that the said amount is

spent towards discount by way of incentive to a dealer, was a normal business practice and as such the said expenditure was not covered under Section 37(3A), it accordingly deleted the same.

4. Ms Mona Bhatt, learned counsel for the revenue submitted that the cash amount and the commission would come within the mischief of “sales promotion” and as such it would be covered under section 37(3A) of the Act. On the other hand, Ms Parikh learned counsel for the assessee placing her reliance upon a Division Bench judgment of this Court in the matter of CIT V. Zippers India Limited, 2006(284) ITR 142, submitted that on the facts and in the circumstances of the case, provisions of section 37(3A) could not be applied.

5. In the matter of Zippers India Limited (supra), the Division Bench of this Court has observed that commission paid for local sales as well as for export sales cannot be considered to be sales promotion expenditure for the purpose of disallowance considering the fact that the commission was paid for the services rendered. In the present matter also facts would speak for themselves and it would be clear that the commissions were post sale

expenditure and not pre sale expenditure incurred on sales promotion.

6. Under the circumstances, according to us, the Commissioner, Income Tax (Appeals) and the Tribunal were justified in holding that the above referred amount was not covered by provisions of section 37(3A) of the Act. The Reference is answered against the interest of revenue and in favour of the assessee. It stands disposed of. No costs.

(R.S.GARG,J.)

(M.R.SHAH,J.)

shekhar/-